

**Amendment and Response**

Applicant: Michael B. Raynham

Serial No.: 09/848,574

Filed: May 3, 2001

Docket No.: 10004326-1

Title: WIRELESS SERVER DIAGNOSTIC SYSTEM AND METHOD

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**REMARKS**

This Amendment is responsive to the Non-Final Office Action mailed March 25, 2004. In that Office Action, the Examiner rejected claims 1, 2, 5, 6, 9, 11, 12, 14, 15, 23-27, and 29-33 under 35 U.S.C. §102(e) as being anticipated by Sexton, U.S. Patent Publication 2002/0068983 ("Sexton"). Claims 35-37 were rejected under 35 U.S.C. §102(e) as being anticipated by Worley et al., U.S. Patent No. 6,651,190 ("Worley"). Claims 3, 4, 7, and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sexton. Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Sexton in view of McLlroy et al., U.S. Patent No. 6,701,521 ("McLlroy"). Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over Sexton in view of Worley. Claim 34 was rejected under 35 U.S.C. §103(a) as being unpatentable over Sexton.

The Examiner's indication that claims 13, 16-20, 22, and 28, although objected to, would be allowable if re-written independent form is noted with appreciation.

With this Response, claims 38-43 have been added, and claims 1, 23, 29, and 35 have been amended. Claims 1-43 remain pending in the application and are presented for reconsideration and allowance.

**Substitute Claims**

The Examiner objected to the claims "because the lines between claims 4 and 5 are crowded too closely together, making reading and entry of amendments difficult", and indicated that substitute claims are required. (Office Action at para. no. 1, page 2). With this Amendment, Applicant has submitted a set of substitute claims, which are the same as the originally filed claims, but with a space added between claims 4 and 5. Applicant respectfully requests removal of the Examiner's objection to the claims.

**35 U.S.C. §102 Rejections**

The Examiner rejected claims 1, 2, 5, 6, 9, 11, 12, 14, 15, 23-27, and 29-33 under 35 U.S.C. §102(e) as being anticipated by Sexton, U.S. Patent Publication 2002/0068983 ("Sexton"). Independent claim 1, as amended herein, includes the limitation "a wireless communication subsystem implemented in [coupled to] a first server, the wireless communication subsystem including a wireless transmitter and a wireless receiver".

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Independent claim 23, as amended herein, includes the limitation “providing a wireless communication subsystem coupled directly to a first server”.

There is no teaching or suggestion in Sexton that there is a wireless communication subsystem implemented in PLC 16, or coupled directly to PLC 16. The Examiner stated that “[s]ince the PLC can transmit data to and receive data from the wireless communication device, it inherently includes a wireless transmitter and receiver.” (Office Action at para. no 4, page 3). Applicant respectfully disagrees that PLC 16 inherently includes a wireless transmitter and receiver. As the Federal Circuit has stated, “[i]nherent anticipation requires that the missing descriptive material is ‘necessarily present,’ not merely probably or possibly present, in the prior art.” *Trintec Indus., v. Top-U.S.A. Corp.*, 63 USPQ2d 1597, 1599 (Fed. Cir. 2002) (quoting *In re Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999)). A wireless communication subsystem is not “necessarily present” in PLC 16. Rather, Sexton discloses that PLC 16 communicates with wireless communication device 34 through multiple servers 22 and 28 and the Internet. (See, e.g., Sexton at para. no. 6). This communication can be accomplished without including a wireless transmitter and receiver in PLC 16, so PLC 16 does not inherently include a wireless transmitter and receiver. Thus, Sexton does not teach or suggest each and every limitation of independent claim 1 or independent claim 23.

In view of the above, independent claims 1 and 23 are not taught or suggested by Sexton. In addition, dependent claims 2, 5, 6, 9, 11, 12, 14, 15, and 24-27, which further limit patentably distinct claim 1 or claim 23, are also believed to be allowable over the cited reference. Allowance of claims 1, 2, 5, 6, 9, 11, 12, 14, 15, and 23-27 is respectfully requested.

Independent claim 29 is directed to a portable server diagnostic tool, and, as amended herein, includes the limitation “a wireless receiver for wirelessly receiving service information that is wirelessly transmitted by [from] at least one server in the first plurality of servers, wherein the service information includes system status information for the at least one server”. Sexton does not teach or suggest a portable server diagnostic tool. Sexton discloses a portable wireless device 34 that is used for monitoring and controlling an industrial controller (PLC 16). (See, e.g., Sexton at para. no. 6). Sexton also does not teach or suggest that device 34 wirelessly receives service information that is wirelessly transmitted

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by at least one server, wherein the service information includes system status information for the at least one server, as recited in independent claim 29. There is no teaching or suggestion in Sexton that device 34 wirelessly receives service information that is wirelessly transmitted by PLC 16. There is no teaching or suggestion in Sexton that PLC 16 is a server or includes any wireless communications capabilities, and, as described above with respect to claims 1 and 23, PLC 16 does not inherently include a wireless communication subsystem. Sexton discloses that ISP server 28 uses a Wireless Application Protocol (WAP) to transmit data to device 34 (see, e.g., Sexton at para. no. 14), but there is no teaching or suggestion in Sexton that the data transmitted by ISP server 28 includes system status information for the ISP server 28. Thus, Sexton does not teach or suggest each and every limitation of independent claim 29.

In view of the above, independent claim 29 is not taught or suggested by Sexton. In addition, dependent claims 30-33, which further limit patentably distinct claim 29, are also believed to be allowable over the cited reference. Allowance of claims 29-33 is respectfully requested.

The Examiner rejected claims 35-37 under 35 U.S.C. §102(e) as being anticipated by Worley et al., U.S. Patent No. 6,651,190 ("Worley"). Independent claim 35 is directed to a server, and, as amended herein, includes the limitation "a wireless communications subsystem coupled to the controller, the wireless communications subsystem configured to wirelessly transmit at least a subset of the server status information via short-range wireless communications." Worley discloses a server 110 that uses long distance wireless communications. (See, e.g., Worley at col. 7, lines 2-3). There is no teaching or suggestion in Worley that the server 110 uses short-range wireless communications, or that it would be desirable to modify server 110 to use short-range wireless communications. Thus, Worley does not teach or suggest each and every limitation of independent claim 35.

In view of the above, independent claim 35 is not taught or suggested by Worley. In addition, dependent claims 36 and 37, which further limit patentably distinct claim 35, are also believed to be allowable over the cited reference. Allowance of claims 35-37 is respectfully requested.

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**35 U.S.C. §103 Rejections**

The Examiner rejected claims 3, 4, 7, and 21 under 35 U.S.C. §103(a) as being unpatentable over Sexton. Claims 3, 4, 7, and 21 are dependent on independent claim 1. As described above with reference to claim 1, Sexton does not teach or suggest each and every limitation of claim 1. Since claims 3, 4, 7, and 21 further limit patentably distinct claim 1, claims 3, 4, 7, and 21 are believed to be allowable over the cited reference. Allowance of claims 3, 4, 7, and 21 is respectfully requested.

The Examiner rejected claim 8 under 35 U.S.C. §103(a) as being unpatentable over Sexton in view of McLlroy et al., U.S. Patent No. 6,701,521 ("McLlroy"). Claim 8 is dependent on independent claim 1. As described above with reference to claim 1, Sexton does not teach or suggest "a wireless communication subsystem implemented in a first server, the wireless communication subsystem including a wireless transmitter and a wireless receiver" as recited in claim 1. McLlroy also does not teach or suggest this limitation of claim 1. Thus, Sexton and McLlroy, either alone, or in combination, do not teach or suggest each and every limitation of claim 1 or claim 8. There is also no suggestion to combine Sexton and McLlroy. Since claim 8 further limits patentably distinct claim 1, claim 8 is believed to be allowable over the cited references. Allowance of claim 8 is respectfully requested.

The Examiner rejected claim 10 under 35 U.S.C. §103(a) as being unpatentable over Sexton in view of Worley. Claim 10 is dependent on independent claim 1. As described above with reference to claim 1, Sexton does not teach or suggest each and every limitation of claim 1. Sexton and Worley, either alone, or in combination, do not teach or suggest each and every limitation of claim 1 or claim 10. There is also no suggestion to combine Sexton and McLlroy. Since claim 10 further limits patentably distinct claim 1, claim 10 is believed to be allowable over the cited references. Allowance of claim 10 is respectfully requested.

The Examiner rejected claim 34 under 35 U.S.C. §103(a) as being unpatentable over Sexton. Claim 34 is dependent on independent claim 29. As described above with reference to claim 29, Sexton does not teach or suggest each and every limitation of claim 29. Since claim 34 further limits patentably distinct claim 29, claim 34 is believed to be allowable over the cited reference. Allowance of claim 34 is respectfully requested.

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**Newly Presented Claims**

The Examiner objected to claims 13, 16-20, 22, and 28 as being dependent upon a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

With this Amendment, the Applicant has submitted new claims 38-43. Claim 38 is an independent claim based on independent claim 1 and dependent claims 12 and 13. The cited references do not teach or suggest each and every limitation of claim 38, and allowance of claim 38 is respectfully requested.

Claim 39 is an independent claim based on independent claim 1 and dependent claim 17. The cited references do not teach or suggest each and every limitation of claim 39, and allowance of claim 39 is respectfully requested.

Claim 40 is an independent claim based on independent claim 1 and dependent claim 18. The cited references do not teach or suggest each and every limitation of claim 40, and allowance of claim 40 is respectfully requested.

Claims 41 and 42 are dependent on claim 40, and are based on dependent claims 19 and 20. Since dependent claims 41 and 42 further limit patentably distinct claim 40, claims 41 and 42 are believed to be allowable over the cited references, and allowance of claims 41 and 42 is respectfully requested.

Claim 43 is an independent claim based on independent claim 23 and dependent claim 28. The cited references do not teach or suggest each and every limitation of claim 43, and allowance of claim 43 is respectfully requested.

**Allowable Subject Matter**

In light of the above, Applicant believes independent claims 1, 23, 29, and 35, and the claims depending therefrom, are in condition for allowance. Allowance of these claims is respectfully requested.

**CONCLUSION**

Any inquiry regarding this Amendment and Response should be directed to either David M. Mason at Telephone No. (408) 447-4046, Facsimile No. (408) 447-0854 or Jeff A.

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Holmen at Telephone No. (612) 573-0178, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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By his attorneys,

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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 10<sup>th</sup> day of June, 2004.

By Jeff A. Holmen  
Name: Jeff A. Holmen